



SUMMATIVE (FORMAL) ASSESSMENT: MODULE 8D

INDIA

This is the **summative (formal) assessment** for **Module 8D** of this course and must be submitted by all candidates who **selected this module as one of their elective modules**.

The mark awarded for this assessment will determine your final mark for Module 8D. In order to pass this module, you need to obtain a mark of 50% or more for this assessment.

INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT

Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.

1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.
2. All assessments must be submitted electronically in **Microsoft Word format**, using a standard A4 size page and an 11-point Arial font. This document has been set up with these parameters – **please do not change the document settings in any way. DO NOT** submit your assessment in PDF format as it will be returned to you unmarked.
3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).
4. You must save this document using the following format: **[studentnumber.assessment8D]**. An example would be something along the following lines: 202021IFU-314.assessment8D. **Please also include the filename as a footer to each page of the assessment** (this has been pre-populated for you, merely replace the words “studentnumber” with the student number allocated to you). Do not include your name or any other identifying words in your file name. **Assessments that do not comply with this instruction will be returned to candidates unmarked.**
5. Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments. **Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words.**
6. The final submission date for this assessment is **31 July 2021**. The assessment submission portal will close at **23:00 (11 pm) GMT on 31 July 2021**. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.
7. Prior to being populated with your answers, this assessment consists of **7 pages**.

ANSWER ALL THE QUESTIONS

QUESTION 1 (multiple-choice questions) [10 marks in total]

Commented [CAM1]: 8 out of 10.

Questions 1.1. – 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and **mark your selection on the answer sheet by highlighting the relevant paragraph in yellow**. Select only **ONE** answer. Candidates who select more than one answer will receive no mark for that specific question.

Question 1.1

The Insolvency and Bankruptcy Code 2016 currently **does not** apply to:

- (a) Small companies.
- (b) Limited Liability Partnerships.
- (c) Individuals and Partnership Firms not being guarantors to corporate debtors.**
- (d) All of the above.

Commented [CAM2]: Correct.

Question 1.2

Which of the following jurisdictions are currently exercised by the Debt Recovery Tribunals?

- (a) Recovery proceedings by Indian banks.
- (b) Disputes under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002.
- (c) Insolvency and bankruptcy of personal guarantors to corporate debtors under the Insolvency and Bankruptcy Code 2016.
- (d) All of the above.**

Commented [CAM3]: Correct.

Question 1.3

Which of these is **not** a function of the Insolvency and Bankruptcy Board of India under the Insolvency and Bankruptcy Code 2016:

- (a) Registration of insolvency professionals.
- (b) Registration of insolvency professional agencies.
- (c) Carrying out inspections and investigations of insolvency professionals.
- (d) Appointing an insolvency professional as a resolution professional for a company.**

Commented [CAM4]: Correct.

Question 1.4

Which of these **can** be liquidated under the Insolvency and Bankruptcy Code 2016:

- (a) A banking company.
- (b) An insurance company.
- (c) National Housing Bank.

(d) A non-banking financial company with asset size of INR 5 billion.

Commented [CAM5]: Correct.

Question 1.5

Which one of the following **is not** a ground for a court to refuse to grant a discharge order under the Presidency- Towns Insolvency Act 1909 and the Provincial Insolvency Act 1920?

- (a) The debtor has failed to maintain proper books and records of its financial position.
- (b) The debtor has borrowed provable debt when he had a reasonable expectation that he will not be able to repay such a debt.

(c) the debtor has travelled outside India without court's approval.

Commented [CAM6]: Correct.

(d) the debtor has brought about the insolvency due to rash and hazardous speculations.

Question 1.6

Indicate which one of the following avoidance powers is **not** available under the Provincial Insolvency Act 1920:

- (a) Avoidance of undue preferences.
- (b) Avoidance of transfers in consideration of marriage.

(c) Disclaimer of onerous contracts.

Commented [CAM7]: Correct.

(d) Avoidance of transfer other than to a *bond fide* purchaser for value.

Question 1.7

Which of these has the highest priority in bankruptcy of an individual under the Insolvency and Bankruptcy Code 2016:

(a) Workmen's dues for 24 months preceding the bankruptcy order.

(b) Amounts due to the Government.

Commented [CAM8]: Incorrect. Correct answer is (a).

(c) Debt owed to the Government banks.

(d) Dues of the employees for a period of 12 months preceding the bankruptcy order.

Question 1.8

Pursuant to Section 10A of the Insolvency and Bankruptcy Code 2016, which of the following **can** be a basis for an application to commence a corporate insolvency resolution process under the Insolvency and Bankruptcy Code 2016?

- (a) A payment default on January 31, 2020.
- (b) A payment default on March 31, 2020.
- (c) A covenant default on March 25, 2020.
- (d) A covenant default on January 31, 2020.

Commented [CAM9]: Correct.

Question 1.9

Which of the following is **not** an action required to be undertaken by the resolution professional in respect of a corporate debtor during a corporate insolvency resolution process under the Insolvency and Bankruptcy Code 2016?

- (a) Maintaining an updated list of creditors.
- (b) Preparation of the information memorandum.
- (c) Drafting and finalization of the resolution plan.
- (d) Filing applications for avoidance transactions.

Commented [CAM10]: Correct.

Question 1.10

Which of the following is **not** a requirement for withdrawing a corporate insolvency resolution process under the Insolvency and Bankruptcy Code 2016:

- (a) Approval of the National Company Law Tribunal.
- (b) Approval of creditors by 90% majority by value.
- (c) Application to be made by the person on whose application the corporate insolvency resolution process was commenced.
- (d) Approval of a resolution plan.

Commented [CAM11]: Incorrect. Correct answer is (d).

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [maximum 2 marks]

In the insolvency resolution process for individuals under the Insolvency and Bankruptcy Code 2016, who prepares the repayment plan and who submits a report on such plan?

The repayment plan is prepared by the debtor in consultation with the resolution professional. The proposed plan is submitted to the court by the resolution professional.

Commented [CAM12]: 2 out of 2.

Question 2.2 [maximum 4 marks]

Please describe how the Official Assignees under the Presidency- Towns Insolvency Act 1909 and the Official Receivers under the Provincial Insolvency Act 1920 are appointed.

The Official Assignee under the Presidency-Towns Act is appointed by the Chief Justice of the High Court in the jurisdiction where the Act applies. His or her remuneration will be determined by the rules made by the State in which he or she is appointed.

Official Receivers are appointed by the State Government to operate in that State. Such Official Receiver is usually appointed under the Provincial Insolvency Act by the insolvency court when the Order of Adjudication is passed or thereafter.

Commented [CAM13]: Correct response. 4 out of 4

Question 2.3 [maximum 3 marks]

Please describe the moratorium that becomes effective during the insolvency resolution process for individuals under the Insolvency and Bankruptcy Code 2016?

A moratorium is declared when an application for an insolvency resolution process is filed. It covers all creditor actions and applies until the date when the application is admitted. Upon admission of the application, a moratorium is declared with reference to all creditor actions and disposals of assets by the debtor. The moratorium will apply for six months, starting on the date when the application is admitted.

Commented [CAM14]: Correct. 3 out of 3

Question 2.4 [maximum 1 mark]

Please indicate the guidelines applicable to out of court restructuring by banks in India and the regulator who has issued these guidelines?

Prudential guidelines on restructuring of advances by banks, issued by Reserve Bank of India

Commented [CAM15]: Date of the guidelines should have been mentioned

0.5 out of 1

QUESTION 3 (essay-type questions) [15 marks in total]

Write a short essay on the constitution and role of the committee of creditors in the corporate insolvency resolution process of a company under the Insolvency and Bankruptcy Code 2016.

Your answer should make reference to at least the following:

- Who constitutes the committee and what is the basis of constitution;
- Who is eligible to be a member of the committee and who is not; and
- various actions that require the committee's approval and the applicable percentages for the same.

Commented [CAM16]: 11 out of 15

As non-voting chairperson, the resolution professional organises the meetings of the committee. The committee consists of unrelated financial creditors. The meeting may also be attended by the members of the board of directors of the company and any operational creditor with a debt exceeding 10% of the total debt, but they are non-voting participants.

The approval of the committee is necessary in the following cases:

Firstly, extending the timeline of the CIRP, and replacing or confirming the resolution professional, as well as approving the resolution plan.

For the following matters, the resolution professional must obtain the approval of the committee by a resolution passed by 66% in value: Raising interim finance; changing the

Commented [CAM17]: Constitution of the committee where there are no financial creditors has not been covered. Basis of constitution has not been covered.

Commented [CAM18]: Majority requirement has not been stated.

capital structure, including issuing additional securities; recording changes in ownership interests; giving instructions to banks holding accounts, for transactions exceeding the limit set by the committee; undertaking any related-party transactions; amending the constitutional documents; delegating the resolution authority's authority to another person; and making changes to the management of the company or its subsidiaries.

For other instances, decisions can be made with a 51% majority of the value of the claims.

Commented [CAM19]: Withdrawal of CIRP has not been covered.

QUESTION 4 (fact-based application-type question) [15 marks in total]

Milky Limited (Milky) is a dairy and milk products company in India. Milky underwent a corporate insolvency resolution process (CIRP) under the Insolvency and Bankruptcy Code 2016; however due to the COVID-19 pandemic, no resolution plans were approved and Milky was sent into liquidation by the National Company Law Tribunal. The resolution professional appointed during the CIRP has not provided her consent to act as the liquidator. Milky currently has a large stock of perishable dairy products.

Basis a request from the National Company Law Tribunal, the Insolvency and Bankruptcy Board of India nominated Mr. Salman Khan, an insolvency professional, to act as the liquidator for Milky and the National Company Law Tribunal has confirmed his appointment as the liquidator

Mr. Khan has contacted you to advise him on the liquidation process under the Insolvency and Bankruptcy Code 2016. In this context, answer the questions below.

Using the facts above, answer the questions that follow.

Question 4.1 [maximum 7 marks]

Prepare a note for Mr Khan on reporting requirements as a liquidator of Milky and the timelines for the same. Please also advise him on how to deal with a situation where the timeline for completion of liquidation has not been met.

A preliminary report must be provided to the National Company Law Tribunal within 75 days of the date on which liquidation commenced. The preliminary report must detail the capital structure, an estimate of the assets and liabilities, and the proposed plan for carrying out the liquidation.

Progress reports must then also be submitted to the Tribunal. The first progress report must be submitted within 15 days after the end of the quarter in which Mr Kahn was appointed. Further reports must then be submitted within 15 days after the end of every quarter in which he acts as liquidator.

After the liquidation process has been completed, Mr Khan must submit a final report along with an application for the dissolution of the company.

If the timelines are not met, Mr Khan can apply to the Tribunal, giving reasons for the timelines not being met and requesting additional time.

Commented [CAM20]: 5 out of 7

Commented [CAM21]: Overall timeline for completion of the liquidation process has not been mentioned.

Question 4.2 [maximum 8 marks]

Please prepare a note for Mr Khan on the process of realization of assets of Milky during liquidation and the eligible buyers.

Mr Kahn must first take all assets, property, effects and actionable claims of the company into his custody or control, except for certain assets that do not form part of the estate. Next, Mr Khan must evaluate the assets and property in order to prepare an asset memorandum. The

Commented [CAM22]: 4 out of 8

Commented [CAM23]: Repeated typos

memorandum must set out the value of the assets, the intended manner of realisation and the expected amount of the realisation. The memorandum must be submitted to the National Company Law Tribunal within 75 days from the commencement date of the liquidation. Mr Kahn must appoint at least two registered valuers to value the assets. Mr Khan must also take any necessary measures to protect and preserve the assets.

He must then sell, by public auction or private contract, the immovable and movable property and actionable claims of the company. Subsequently, he must transfer the property to the buyers. The proceeds must then be distributed according to the rules of the Code.

Mr Kahn can sell the assets on a stand-alone basis, collectively, on a slump-sale basis or in parcels. He can also sell the company or business as a going concern. If the committee of creditors have recommended a sale of the company as a going concern, Mr Kahn must attempt to do so. If this has not happened within 90 days from the commencement of liquidation, the assets must be sold on a standalone basis, in parcels or collectively.

The normal rule is that assets must be sold by public auction, but in certain cases, they can be sold through a private sale. One example is if the assets are perishable or are likely to deteriorate in value if not sold immediately, which is the case under these facts. He can therefore sell the dairy products in a private sale.

Commented [CAM24]: Possibility of accepting a scheme has not been covered

Commented [CAM25]: No mention of eligible buyers.

*** End of Assessment ***

Total: 37.5 out of 50